

Original

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July 29, 1992

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Federal Communications Commission
Office of the Secretary

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Washington, D.C. 20554

RE: Wilburn Industries, Inc.
BPH-911230MC
Channel 280A
Westerville, Ohio

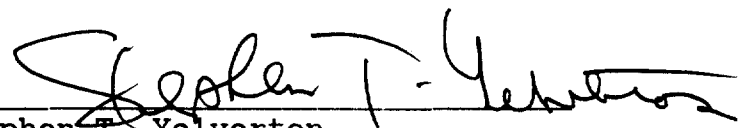
Dear Ms. Searcy:

Enclosed for filing on behalf of Ohio Radio Associates, Inc. are an original and four (4) copies of its supplement to petition to deny and dismiss the application of Wilburn Industries, Inc..

Please contact the undersigned in our Washington, D.C. office.

Respectfully submitted,

MAUPIN TAYLOR ELLIS & ADAMS, P.C.

BY: 
Stephen T. Yelverton
Attorneys for Ohio Radio
Associates, Inc.

dyc/sty3/sty5
Enclosures
12269.002

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FM EXAMINERS

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of the Secretary

In Re Application of:)
)
WILBURN INDUSTRIES, INC.) File No. BPH-911230MC
)
Application for Construction)
Permit for a new FM station,)
Channel 280A, Westerville,)
Ohio)

To: Chief, Audio Services
Division

SUPPLEMENT TO PETITION TO DENY AND DISMISS THE APPLICATION
OF WILBURN INDUSTRIES, INC.

Ohio Radio Associates, Inc. ("ORA"), by its attorneys, pursuant to Sections 73.3584(a) and 73.3587 of the Commission's Rules, hereby submits this supplement to petition to deny and dismiss the application of Wilburn Industries, Inc. ("Wilburn"). On March 26, 1992, ORA filed a petition to deny and dismiss the application of Wilburn. In support of its supplement, ORA submits the following comments.

ORA, in its petition to deny and dismiss, contended that the application of Wilburn must be dismissed with prejudice because it proposes a short-spacing of 6.84 km. In a comparative hearing, a short-spaced application cannot be considered where other applications propose fully-spaced and technically suitable tower sites. See, e.g., North Texas Media, Inc. v. FCC, 778 F.2d 28, 34 (D.C. Cir. 1985). ORA and one other applicant in this proceeding propose such acceptable tower sites and no party has contested their availability and suitability.

ORA submits this supplement to report a recent Commission decision reaffirming the policy of dismissal of short-spaced applications in comparative hearings where fully-spaced and technically suitable tower sites are not shown to be unavailable. Jemez Mountain Broadcasters, FCC 92-273, paras. 2 and 12, rel. July 1, 1992. Although that case involved a waiver of Section 73.207 and the Commission allows certain short-spaced applicants to be processed under Section 73.213¹ without the need for a formal waiver under Section 73.207, this does not change the result. In MM Docket No. 88-375, 6 FCC Rcd. 3417, 3418, n. 7 (1991), the Commission stated that applicants, such as Wilburn, which request processing under Section 73.213, must nevertheless meet the minimum spacing requirements of Section 73.207 with respect to all facilities and allotments at the time of filing their application. The only exception is short-spacing which existed at the time the allotment in question was made. Here, the short-spacing was created after the allotment was made.

¹Wilburn requests processing under Section 73.213(c)(1).

WHEREFORE, in view of the foregoing, ORA requests that the Commission deny and dismiss the application of Wilburn.

Respectfully submitted.

MAUPIN TAYLOR ELLIS & ADAMS, P.C.

By: 

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July 29, 1992
dyc/sty3/sty5

CERTIFICATE OF SERVICE

I, Sue W. Swinson, a secretary in the law offices of Maupin Taylor Ellis & Adams, P.C., do hereby certify that on this 29th day of July, 1992, I have caused to be hand delivered or mailed, U.S. mail, postage prepaid, a copy of the foregoing "Supplement to Petition to Deny and Dismiss the Application of Wilburn Industries, Inc. " to the following:

Dennis Williams, Chief*
FM Branch
Room 332
Federal Communications Commission
Washington, D.C. 20554

Eric S. Kravetz, Esq.
Brown, Finn & Nietert, Chartered
1920 N. St., N.W., Suite 660
Washington, D.C. 20036


Sue W. Swinson

Hand Delivery*

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